COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications And Energy on its own Motion into the Billing Services to be Provided by Electric Distribution Companies to Competitive Suppliers Serving Customers in their Service Territories.	)	D.T.E. 01-28 (Phase II)

COMMENTS OF COMPETITIVE SUPPLIERS

June 29, 2001

I. INTRODUCTION

AES NewEnergy, Inc., AllEnergy Gas and Electric Marketing Company, L.L.C, Enron Energy Services, Exelon Energy Company, Green Mountain Energy Company, The NewPower Company, and SmartEnergy, Inc. (the "Competitive Suppliers") are pleased to offer the following comments regarding competitive market issues.

The Competitive Suppliers commend the Department of Telecommunications and Energy (the "Department") for undertaking the initiative to investigate a new approach to billing services. We share the Department's views that reforms are needed in order to create a viable retail market in Massachusetts that will provide choices and value to customers. As the Department explained in its December 2000 Report to the General Court on Metering, Billing, and Information Services:

> The Department agrees … that a billing option that would allow suppliers to send a single bill to their customers would assist in the development of a healthy competitive generation market, because supplier-sent invoices could allow the supplier to create a brand name and to advertise and charge for services that they provide.[1]

We look forward to working with the Department, the Division of Energy Resources, utilities, customer groups, and other interested parties to identify and implement those necessary reforms.

On June 7, 2001, the Department held a technical session to discuss billing related issues. During that meeting, participants discussed 1) the ability of the Department to approve regulations providing for a supplier consolidated bill, 2) payment order, and 3) purchase of receivables. At the end of the session, the hearing officer invited participants to provide written

[1] *Report to the General Court Pursuant to Section 312 of the Electric Restructuring Act, Chapter 164 of the Acts of 1997 on Metering, Billing and Information Services* (December 29, 2000) ("MBIS Report"), p. 27.

comments on these topics. The Competitive Suppliers hereby provide comments on issues below.

II. PRIORITY OF BILLING AND PAYMENT OPTIONS

During the technical session, the Department asked participants to indicate whether the Department should address supplier consolidated billing or payment order first, implying that the Department could immediately address either one or the other, but not both. The Competitive Suppliers are unable to choose between these two sets of issues; they are both critical to creating a viable competitive market in Massachusetts.

Fortunately, there is no need to choose because these problems have already been solved in other jurisdictions. Billing and payment solutions have already been developed in other jurisdictions, including New York, Pennsylvania, Texas, and are currently being implemented in New Jersey. Massachusetts can and should adopt practices that are already developed and tested.

The Competitive Suppliers note that addressing *both* Payment Order and Supplier Consolidated Billing issues provides for an energy market which is viable for the largest number of competitive suppliers—some of whom are prevented from entering the Massachusetts market due to Payment Order issues, and some of whom find the lack of Supplier Consolidated Billing a more fundamental barrier to entry. We would therefore request that the Department give each issue equal weight and implement a broad range of billing solutions so as to attract the greatest possible number of market participants.

III. THE DEPARTMENT'S DECISION THAT A SUPPLIER SINGLE BILL OPTION IS PERMISSIBLE WITHIN THE EXISTING REGULATORY FRAMEWORK IS SUPPORTED BY MASSACHUSETTS LAW.

1. History of DTE determination.

The Department reported its conclusions concerning MBIS services to the Legislature on December 29, 2000. Among other things, the Department concluded in its MBIS Report that a supplier single bill is permissible under the regulatory framework. Specifically, the Department stated:

> … the primary benefit identified by commenters supporting competitive billing, a supplier single-bill option, can be readily accommodated within the existing regulatory framework by requiring distribution companies to offer a third billing option to customers and competitive suppliers.[2]

In its MBIS Report, the Department noted that it had received a number of comments supportive of supplier single-billing opportunities. The reasons advanced in support of the supplier single-billing option included evidence that consumers prefer receiving a single bill, rather than two bills, for their electricity service.[3] Meeting customer expectations is the surest way to the development of a competitive marketplace.

The Competitive Suppliers have made clear their belief that a system that allows only distribution companies to provide a single bill constitutes a significant obstacle to the creation of the robust competitive generation market in Massachusetts, which is the main goal of the 1997 Restructuring Act. Without this traditional opportunity for direct customer contact, the following necessary elements of a healthy competitive marketplace are minimized: (1) the valuable synergy of using a bill as a method of marketing additional products and services, (2) the important process of brand differentiation of one competitive supplier from the customer's distribution

[2] *MBIS Report* at 28.
[3] The New York Public Service Commission reported the result of a survey indicating that 80 percent of survey respondents disliked receiving two electricity-related bills. *MBIS Report*, Appendix L at page 2.

company and other competitive suppliers, (3) the opportunity to offer tailored billing options as a form of customer service,[4] and (4) the chance to bundle electric bills with bills for other services, thereby providing customers with unified statements. The Department agreed that the ability of suppliers to send a single bill would assist in the development of the competitive generation market "because supplier-sent invoices could allow the supplier to create a brand name and to advertise and charge for services that they provide."[5]

The Competitive Suppliers share the Department's view that a supplier single bill can be readily accommodated within the existing regulatory framework in Massachusetts. In the subsections that follow, the competitive suppliers explain why a supplier single-bill is compatible with the Department's statute and regulations.

2. The Department already possesses the statutory and regulatory authority to allow a supplier single-billing option.

G. L. c. 164, § 1F(3) provides that "[T]he department is …authorized and directed to establish rules and regulations to (i) promote effective competition…" In its MBIS Report, the Department clearly stated that allowing a supplier single bill would operate to promote effective competition in the State.

Specifically, the Department stated, "… the Department anticipates that the availability of such an option would assist in the development of a competitive generation market because it would provide the opportunity for competitive suppliers to send a single electric bill to their customers, as opposed to having the supplier's charges included in the invoice sent by the distribution company."[6]

[4] In fact, the Competitive Suppliers recognize that the billing systems used by most distribution companies are not designed to accommodate the numerous different pricing options which will be available in a competitive environment.
[5] *MBIS Report* at 27.
[6] *MBIS Report*, pages 28-29.

Having found that the supplier single-bill option would "promote effective competition", the Department is clearly authorized by the 1997 Restructuring Act to adopt rules that require distribution companies to accommodate and assist suppliers in developing supplier single billing.

3. No provision in the Department's statute or regulations precludes the allowance of a supplier single-billing option.

While some have argued that G.L. c. 164, §1D prohibits the Department from allowing supplier single-billing, such an argument is inconsistent with the 1997 Restructuring Act generally, and with the clear language of G.L. c. 164, §1D.[7]

The 1997 Restructuring Act was enacted to promote and enhance customer choice in the purchase of gas and electricity. Meaningful customer choice is simply not possible without first establishing a healthy competitive market in Massachusetts – one that includes both buyers *and* sellers. In interpreting the statute providing for the establishment of a competitive market, the Department must be mindful of the Legislature's clear intention to offer meaningful choice to customers. The Department was fully aware of the Legislature's intention when it concluded in its MBIS Report that allowing a single supplier-billing option would promote customer choice.

Moreover, G.L. c. 164, §1D in no way bars the supplier single-billing option. Section 1D merely requires that *distribution companies* provide consumers with bills through one of two options: (1) a single bill from the distribution company, or (2) two bills, one from the distribution company and one from the non-utility supplier for energy charges. Notably, the two billing options set out in Section 1D are the billing options which are available to *distribution companies.* Section 1D does not contain any language prohibiting a single bill from a competitive supplier. Section 1D clearly does not address other billing options which might be available to customers,

[7] See Acting Superintendent of Bournewood Hospital v Baker, 725 N.E.2nd 552, 431 Mass. 101 in which the Supreme Judicial Court stated: "As a general rule, a statute must be construed 'according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment…'" Acting Superintendent at 554-555 (internal citation omitted).

such as the supplier single-bill option. If the Legislature had intended to limit *customers* to just two options – a single bill from the distribution company and the two-bill option – it could have done so. However, there is nothing in Section 1D which sets out what a supplier can or cannot provide to its customers in the way of bills; nor is there any language in Section 1D or elsewhere which limits a customer's ability to obtain a single bill from its supplier.

Given the clear intention of the statute as a whole to promote a competitive electricity market, the absence of any language in the statute precluding the supplier single-billing option must be given weight by the Department in its interpretation of its authority to regulate this area.

4. The DTE has the discretion to interpret G. L. c. 164 to provide for a supplier single-billing option.

The Department has extensive authority to interpret G. L. c. 164. The Supreme Judicial Court ("SJC") has repeatedly articulated its support of administrative discretion in Massachusetts. In Nuclear Metals, Inc. v Low-Level Radioactive Waste Management Bd., 656 N.E.2nd 563, 421 Mass. 196 (1995), the SJC stated: "A state administrative agency in Massachusetts has considerable leeway in interpreting a statute it is charged with enforcing." Id. at 572. In regard to regulations promulgated by such agency in furtherance of its authority, the Court in Nuclear Metals stated: "Such regulations are not to be declared void unless their provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate." Id.

The SJC has consistently upheld the Department's broad discretion and authority to promulgate reasonable rules in the regulation of the electric and gas industry. In Cambridge Electric Light Company v Department of Public Utilities, 295 N.E.2nd 876, 363 Mass. 474 (1973), the Court clearly reaffirmed the Department's authority to exercise its regulatory mandate. "We have hitherto read § 76C as giving the department broad power to establish rules

and regulations consistent with c. 164" and "…a regulation under § 76C need not necessarily find support in a particular section of c. 164; *it is enough if it carries out the scheme or design of the chapter and is thus consistent with it.* Id. at 888 (emphasis added).

Certainly, the Department can interpret the 1997 Restructuring Act – a statute which attempts to establish a competitive generation environment in Massachusetts[8] - in such a way as to provide competitive suppliers with the option of providing their customers with a single bill. In another forum, the Department is presently considering the state of electricity competition in Massachusetts and, in particular, the barriers to competition and what can be done to remove those barriers. *See* May 10, 2001 letter from DTE Chairman Connelly announcing May 31, 2001 technical conference on competitive issues. Clearly, the inability to offer customers a supplier single bill presents a significant barrier to competition. As the Department wisely moves to remove barriers to competition in this State, it is crucial that the Department not overlook the significant barrier associated with the inability of suppliers to offer a single bill.

The Department has recognized the importance of allowing suppliers the single bill option. Moreover, there is nothing in the statute to restrict the Department's authority to provide customers with such an option. Allowing supplier single-billing would be consistent with the public interest, would be in keeping with the recommendations of the Division of Energy Resources ("DOER")[9] – the agency designated by the Legislature to assist the Department in this endeavor - and would respond to the legitimate concerns of competitive suppliers licensed to do business in the Commonwealth.

[8] The DTE confirmed in its February 26, 1998 Order promulgating regulations under Chapter 164 that the purpose of the 1997 Restructuring Act was "to bring the benefits of retail competition in the electricity generation market to all retail consumers in Massachusetts". D.T.E. 96-10 (February 28, 2000), at 1.

[9] Carol Wasserman, on behalf of the DOER, announced during the technical session on June 7, 2001 that the DOER supported supplier single-billing option and found nothing in G.L. c. 164 which precluded that option. June 7, 2001 Technical Conference, Tr. at 110-111.

IV. PAYMENT ORDER OPTIONS

During the June 7th technical session, several payment order options were discussed. These options included utility first, then supplier; past-due first, then current; pro-rata; and the Suppliers' preferred method, billing party assumption of receivables.

1. Billing party assumption of receivables

The "Assumption of Receivables" option requires the billing party to assume the receivables of the non-billing party; thus the non-billing party receives its payment regardless of what is collected from the customer. In this method, the non-billing party (utility or supplier) is relieved of normal collection activities and associated liability. This approach increases efficiency and reduces costs, because only one party must engage in collection activity, rather than two. This approach also avoids the potential for customer confusion that can result from the customer having a partial payment posted to a current balance (which may not yet be due), by one party, while having a past-due balance (and being subject to collection activity), by the other party.

Current pricing of Standard Offer and Default Service includes no allocation for credit and collection costs or bad debt expenses. Pricing and Procurement of Default Service, D.T.E. 99-60-B (June 30, 2000). Instead, all such costs continue to be collected through distribution rates. As a result, the customer pays the utility both the distribution-related ***and the generation-related*** costs of credit, collection and bad debt ***even if he switches to a competitive supplier***.

For this reason, utilities providing a consolidated bill should be required to assume supplier receivables at the full 100% value. Otherwise, the customer would be forced to pay credit, collection and bad debt costs twice – once to the utility in distribution rates and a second time to the supplier whose receivables are discounted by the utility.

In the instance where the supplier presents the consolidated bill, utility receivables should be assumed at a negotiated discount rate, which, at least, approximates the allocation for collection costs and bad debt expense in utility distribution rates. A discount rate may be determined by the DTE, but suppliers and utilities should have the right to negotiate a receivables discount rate if they so choose. Again, this is needed to ensure that customers do not pay twice.

Suppliers recommend that the DTE should carefully consider "Assumption of Receivables" as a viable solution to concerns regarding the current payment- posting model.

2. Payment Order

Currently, Suppliers and customers have only two billing options: 1) Two bills, one each from the utility and the supplier, or 2) a utility provided consolidated bill. Payments made under the single bill option are allocated to distribution service first. This creates problems for suppliers in instances where customers make less than full payments. Customers can make partial payments that cover only the distribution service and avoid paying suppliers without the fear of their service being terminated. This is not the case if the customer is on Standard Offer or Default Service. If the customer fails to pay either of these charges, the utility has the right to shut off service. This puts the supplier at a disadvantage vis-à-vis the utility.

Under a single bill option, payments should be credited on a pro-rata basis between utility and supplier. A pro-rata system is fair and comparable to existing allocation practices used by the utilities. A pro-rata allocation of payments puts supplier service on the same footing as standard offer and default service. This provides an incentive for the customer to continue to pay their supplier.

Massachusetts Electric Company ("MECO") has interpreted the regulations a bit differently from the other utilities. Under MECO's procedure, payments go first to distribution company arrears, then to supplier arrears, then to distribution company current charges, then finally to supplier current charges. This is an important improvement over the other utilities' interpretation, and does provide some relief from the "Utility first" model. However, it does not put the supplier on comparable footing with the utility. The table below illustrates the differences between the payment order methods.

Payment Allocation: This table illustrates payment allocation under the three payment order methods. A bill comprised of 60% supplier charges and 40% utility charges is used as an example.

	Pro-Rata Pymt Order		MECO		Other Utilities - Current	
	Supplier	Utility	Supplier	Utility	Supplier	Utility
$100 Current Pymt for $100 total bill	$ 60	$40	$60	$40	$60	$40
$50 Pymt for $100 total current bill	$30	$20	$10	$40	$10	$40
$100 Past Due, $50 current charges w/ $50 pymt	$30	$20	$10	$40	$ 0	$50

The above table shows the allocations to the supplier and the utility of various payment types. It assumes that the supplier portion is sixty percent of the charges and the utility portion is forty percent. If the customer pays the full amount, each party receives the full amount regardless of payment order methodology. The differences become apparent if the customer makes a partial payment, and additionally if the customer is already in arrears. The second row illustrates what happens if the customer pays half of the total bill. Under the pro-rata method, each party is paid half of what is owed. Under both MECO and current methods, the utility gets paid in full ($40) and

the supplier gets only seventeen percent ($10/$60) of what is owed. Finally, if the customer is behind in all payments and they make a partial payment, under pro-rata, both parties receive the same percentage of total amounts due, whereas under the MECO payment order, the distribution past due amount is paid in full first ($40), and the amount remaining goes to supplier past due amounts ($10), and under the other utilities' current method, the supplier gets nothing. Under either the MECO or other utility methods, the supplier is disadvantaged.

Rules directing payment order to be other than pro-rata can be a significant barrier to suppliers in the residential and very small commercial markets. In fact, this was one of the reasons that AllEnergy withdrew from the Bay State Residential Pilot Program. Small Customers require the convenience of a single bill. Suppliers need to be on an equal footing with the utility in the collection of amounts owed. Until these regulations are changed, payment order will remain as a significant barrier for suppliers, especially for those who desire to serve residential and small commercial customers.

A final point, if billing and/or payment options are modified, the modification should apply to both electric and natural gas markets.

IV. CONCLUSION

In conclusion, the Competitive Suppliers encourage the Department to allow a third billing option – the supplier consolidated bill. The Competitive Suppliers also encourage the Department to require the utility to assume the supplier's receivables as the preferred and most efficient method of solving the payment order problem. In lieu of assumption of receivables, the next preferred method would be a pro-rata application of payments to the supplier and the utility, followed by the "utility arrears, supplier arrears, utility current, supplier current" model.

Adopting these modifications to the Department's regulations would remove barriers to the development of the competitive market in Massachusetts.

Respectfully submitted,

AES NEWENERGY, INC
By

Steven M. Rothstein
Managing Director – New England
530 Atlantic Avenue
Boston, MA 02210
(617) 772-7500

ALLENERGY GAS AND ELECTRIC MARKETING COMPANY, LLC
By

Rebecca Bachelder
95 Sawyer Road
Waltham, MA 02453
(781) 906-2264

ENRON ENERGY SERVICES
By

Frank Rishe
Manager, Government Affairs
343 Thornall St., 5th Fl.
Edison, NJ08837
(732) 548-1234 x223

EXELON ENERGY
By

R. Scott Brown
Director-Business and Governmental Affairs, Exelon Enterprises
2600 Monroe Boulevard
Norristown, PA 19403
(610) 676-8160

GREENMOUNTAIN ENERGY COMPANY
By

Karen O'Neill
Vice President – New Markets
75 Green Mountain Drive
South Burlington, VT 05403
(802) 846-2560

SMART ENERGY, INC.
By

Patrick G. Jeffery
VP Regulatory and Public Affairs
300 Unicorn Park Drive
Woburn, MA 01801
(781)-460-2881

THE NEWPOWER COMPANY
By

Becky Merola
Director, Government Affairs
6418 Wynwright Drive
Dublin, Ohio 43016
(614) 873-2995